

Is Your Choice of Law Clause the Best Choice for You?

A recent case out of the Ninth Circuit Court of Appeals provides a good reminder that it is not always best to incorporate your own state's law as governing law in your contracts. In fact, sometimes your own state's law can be more beneficial to the other party.

In *Red Lion Hotels Franchising, Inc. v. MAK, LLC*, 663 F.3d 1080 (9th Cir. 2011), the Ninth Circuit Court of Appeals allowed a franchisee from California to take advantage of the franchise law from the state of Washington. The franchisor offered franchise agreements incorporating its own state law—Washington law—as the governing law. When the parties had a dispute over termination, the franchisee sued the franchisor and asserted a claim under the Washington's Franchise Investment Protection Act. The franchisor objected, arguing that the Washington franchise law applies only to franchisees *in Washington*, not California. But the court found in favor of the franchisee because of the choice of law clause in the franchise agreement. The court specifically noted that that the pertinent portion of Washington's franchise law did not specifically say that the law was limited only to franchisees in Washington. By contrast, other provisions of Washington's law did explicitly limit application only to actions "in this state." The Ninth Circuit reminded that, as a general principle, **"if a state law does not have limitations on its geographical scope, courts will apply it to a contract governed by that state's law, even if parts of the contract are performed outside of the state."**

In hindsight, if the franchisor had known that its own state franchise law contained no geographical limits and that its protections could effectively be "exported" to franchisees outside of Washington, it might have selected a different law to govern its franchise agreement. This also happened several years ago to another supplier who had incorporated California law into its contract, which allowed a foreign distributor to sue it using California's equipment dealer law.

The lesson from these cases is an important one. While contract drafters certainly cannot eliminate every potential problem that may result from the selection of a particular governing law, they can be aware of the laws most likely to come into play in the types of disputes most likely to occur. For example, franchisors and suppliers might be well advised to get a better understanding of their own home states' franchise and dealer laws before they inadvertently "export" the

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protections of those laws to franchisees and dealers in other states or countries by virtue of a choice of law clause.

If you are considering a choice of law clause for your commercial contracts, or if you just would like to know more about franchise and dealer laws, [Commercial and Competition Law Group](#) can help you.

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